

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-SIT-1
)	ORDER NO. 01-1219-30
RULEMAKINGS TO IMPLEMENT)	Order Adopting Procedural
RULES OF PRACTICE AND)	Clarifications To The
PROCEDURE AND SITE)	Power Plant Siting
CERTIFICATION.)	Regulations
_____)	

I. Initiation of Formal Rulemaking Procedure

On October 19, 2001, the Energy Commission published the required formal Notice of Proposed Action with the Office of Administrative Law for Adoption of Procedural Clarifications to the Power Plant Siting Regulations.

II. Consideration of Alternatives

The Energy Commission has determined that no alternative before it would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the regulations proposed for adoption. The text of the proposed amendments is the same language that was provided to the Office of Administrative Law and the public with the Notice of Proposed Action.

III. Adoption of Regulations

The Energy Commission hereby adopts the attached Amendments to the Power Plant Siting Regulations, dated October 2001.

IV. Authority and Reference

Authority: Sections 25213, 25218(e), Public Resources Code.

Reference: Sections 21081, 25210, 25214, 25216.5(a), 25217(b), 25500, 25519, 25521, 25523, 25550 and 25550.5, Public Resources Code.

Dated: December 19, 2001

CALIFORNIA STATE ENERGY
RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

WILLIAM J. KEESE
Chairman

COMPLETE TEXT OF THE ENERGY COMMISSION'S PROPOSED AMENDMENTS TO THE POWER PLANT SITING REGULATIONS

Docket No. 01-SIT-1

October 2001
Adopted December 19, 2001

Title 20, California Code of Regulations
Division 2 – State Energy Resources Conservation and Development Commission

1207. Intervenors.

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed at least 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this chapter, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, ~~and but~~ may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(e) Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.

Authority: Section 25213, Public Resources Code.

Reference: Section 25214, Public Resources Code.

Section 1212. Rules of Evidence.

The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant noncumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) Oral or written testimony offered by any party shall be under oath.

(c) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party. Questions of relevance shall be decided by the presiding committee member.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.

Authority: Section 25218(e), Public Resources Code.

Reference: Section 25210, Public Resources Code.

Section 1710. Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.

(a) All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public and noticed as required by law; provided, however, these requirements do not apply to communications between parties, including staff, for the purpose of exchanging information or discussing procedural issues. Information includes facts, data, measurements, calculations and analyses related to the project. Discussions between the staff and any other party to modify the staff's position or recommendations regarding substantive issues shall be noticed. The staff may also meet with any governmental agency, not a party to the proceedings, for the purpose of discussing any matter related to the project without public notice.

(b) Except for the hearing conducted pursuant to Section 1809(a) and the workshop pursuant to Section 1709.5(d), notice of the initial public hearing on a notice or application shall be mailed or otherwise delivered fourteen (14) days prior to the first

such hearing to the applicant, intervenors, and to all persons who have requested notice in writing. Except for continued hearings, ~~notices of each and every subsequent hearing, presentation, conference, meeting, workshop, or site visit shall,~~ to the extent possible, be mailed at least fourteen (14) days in advance, and in no case less than ten (10) days in advance.

(c) The public adviser shall be consulted in the scheduling of locations, times, and dates for all noticed hearings, presentations, conferences, meetings, workshops, and site visits so as to encourage maximum public participation.

(d) Notice of hearings, conferences, and meetings shall be signed by a member of the committee or specific designee thereof.

(e) The public adviser shall be afforded a reasonable opportunity to review all notices of hearings, presentations, conferences, meetings, workshops, and site visits for timeliness, completeness, clarity, and adequacy of dissemination.

(f) Publicly noticed ~~H~~hearings, presentations, conferences, meetings, workshops, and site visits may be continued from the date, time, and place originally scheduled to a future date, time, and place, by posting notice at the door in the same manner as provided by Government Code section 11129. If the continuance is to a date ten days or more in the future, then notice shall also be provided by mail as provided in subdivision (b).

(g) Publicly noticed ~~H~~hearings presentations, conferences, meetings, workshops, and site visits may be canceled for good reason, provided the following requirements are met:

(1) A notice of cancellation shall be posted at the door in the same manner as provided by Government Code section 11129.

(2) A notice of cancellation shall be mailed as provided in subdivision (b).

(3) If the notice of cancellation is mailed less than ten (10) days before the originally noticed date, then the staff shall work with the public adviser to ensure that notice is provided to all interested parties by the best means available.

~~(h) Nothing in this section shall prohibit an applicant from informally exchanging information or discussing procedural issues with the staff without a publicly noticed workshop.~~

Authority: Section 25213, Public Resources Code.

Reference: Section 11129, Government Code; and Sections 25216.5 and 25222, Public Resources Code.

Section 1712. Right to Become a party; rights and Duties.

(a) Any person may petition to intervene pursuant to Section 1207 of these regulations. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such person became a party, without a showing of good cause.

(b) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), Each party shall have the right to present witnesses, to submit testimony and other evidence, to cross-examine other witnesses, to obtain information pursuant to Section 1716, and to file motions, petitions, objections, briefs, and other documents relevant to the proceeding. Each party shall be provided with a copy of the notice or application. The rights set forth herein are in addition to such other rights as the parties may have as set forth in these Regulations, including Section 1212 (c).

(c) Each party shall have the responsibility to comply with the requirements for filing and service of documents, the presentation of witnesses and evidence, and any other reasonable conditions which may be imposed by order of the presiding member.

Authority: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Section 25214, Public Resources Code.

Section 1714.5 Agency Comments on an Application; Purpose and Scope.

(a) Update as necessary the information requested or submitted by the agency during the notice proceedings;

(b) Perform or conduct such analyses or studies as needed to resolve any significant concerns of the agency, or to satisfy any remaining substantive requirements for the issuance of a final permit by the agency which would have jurisdiction but for the commission's exclusive authority, or for the certification by the commission for the construction, operation, and use of the proposed site and related facilities; and

(c) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the application, the results of the agency's analyses, studies, or other review relevant to the application. The agency may submit comments and recommendations on any aspect of the application, including among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area, and other aspects of the design, construction, or operation of the proposed site and related facility.

(d) Consistent with Section 1747, comments and recommendations submitted to the commission pursuant to this section regarding the project's conformance with applicable laws, ordinances, and standards under the agency's jurisdiction shall be given due deference by the commission staff.

Authority: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Section 25519(f),(g),(j), Public Resources Code.

Section 1718. ~~Prehearing~~ Staff Meetings; Purposes.

(a) At any time after a notice or application is filed, the staff may initiate informal, voluntary meetings with the applicant, other parties, ~~and~~ interested agencies, or the public on matters relevant to the notice or application. Such meetings may include workshops, site visits, or other information exchanges.

(b) All meetings shall be noticed pursuant to Section 1710 of these regulations and shall be open to the public. The notice shall list the topics and purposes of the meetings. Where such meetings are intended to discuss social, economic, or other impacts on communities surrounding a proposed site, they ~~shall~~ should be held in or near the communities affected.

(c) ~~Such~~ Staff Meetings initiated by staff may be held for any of the following purposes:

(1) To allow parties to solicit and exchange information relevant to the notice or application;

(2) To allow parties to identify areas of factual and legal agreement;

(3) To allow parties to identify areas of disagreement, to refine issues, and to develop the positions and contentions of the parties; or

(4) To allow members of the public to recommend areas of inquiry to the parties, to identify issues, and to ask questions of the applicant, staff and parties concerning each siting proposal, the commission's siting procedures, and possible positions of the parties.

(d) The public adviser, and in the adviser's absence, the staff counsel, shall ensure that all persons are provided a reasonable opportunity to participate in the discussions at each meeting.

(e) The presiding member may require the parties to report periodically on the scope, purpose, and progress of such meetings. Any person dissatisfied with the

manner in which such meetings are being conducted may petition the presiding member to take remedial action.

Authority: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Sections 25210 and 25216.5, Public Resources Code.

Section 1741. Application Proceeding; Purpose and Objectives.

(a) The purpose of an application proceeding is to ensure that any sites and related facilities certified provide a reliable supply of electrical energy at a level consistent with the need for such energy, and in a manner consistent with public health and safety, promotion of the general welfare, and protection of environmental quality.

(b) The application proceeding shall be conducted in order to accomplish all of the following objectives:

~~(1) To ensure that no facility is certified unless it is found to be in conformity with the 12-year forecast of electric demand adopted pursuant to Section 25309(b).~~

~~(2)~~ (1) To ensure that the applicant incorporates into the project all measures that can be shown to be feasible, reasonably necessary, and available to substantially lessen or avoid the project's significant adverse environmental effects, and to ensure that any facility which may cause a significant adverse environmental effect is certified only if the benefits of such facility outweigh its unavoidable adverse effects.

~~(3)~~ (2) To ensure that the applicant takes all measures that can be shown to be feasible, reasonably necessary, and available to comply with applicable governmental laws and standards; to ensure that any facility certified complies with applicable federal law; and to ensure that any facility which fails to comply with an applicable local or state law or standard is certified only if such facility is required for public convenience and necessity and there are not more prudent and feasible means of achieving such convenience and necessity.

~~(4)~~ (3) To ensure safe and reliable operation of the facility.

Authority: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Sections 21081, 25523, 25524 and 25525, Public Resources Code; and 14 California Code of Regulations, Sections 15091 and 15093.

Section 1748 Hearings; Purposes; Burden of Proof.

(a) The hearings shall be used to identify significant adverse impacts of the proposal on the environment which were not identified in proceedings on the notice of intention and shall assess the feasibility of measures to mitigate the adverse impacts.

The applicant's environmental information and staff and agency assessments required by Section 1742 shall be presented.

(b) The hearings shall consider whether the facilities can be constructed and operated safely and reliably and in compliance with applicable health and safety standards, and shall assess the need for and feasibility of modifications in the design, construction, or operation of the facility or any other condition necessary to assure safe and reliable operation of the facilities. The applicant's safety and reliability information and staff and agency assessments required by Section 1743 shall be presented.

(c) The hearings shall consider whether the facilities can be constructed and operated in compliance with other standards, ordinances, regulations and laws and land use plans applicable to the proposed site and related facility. The applicant's proposed compliance measures and the staff and agency assessments required by Section 1744 shall be presented. The determination of compliance required by Section 1744.5 shall also be presented.

~~(d) The hearings shall consider whether the proposed facilities are in conformity with the level of electricity demand adopted pursuant to Section 25309(b) of the Public Resources Code. The applicant and staff shall both present evidence in support of their positions on this issue.~~

~~(e)~~ (d) Except where otherwise provided by law, the applicant shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.

~~(f)~~ (e) The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision. The presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition.

~~(g)~~ (f) Any party to the application proceeding shall be provided a reasonable opportunity to move to strike portions of prior testimony taken during the notice proceeding. Such motion may be based on incorrectness, irrelevance, or changed circumstances.

Authority: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Sections 25216.5 and 25521, Public Resources Code.

Section 1751. Presiding Member's proposed Decision; Basis.

(a) The presiding member's proposed decision shall be based exclusively upon the hearing record, including the evidentiary record, of the proceedings on the application.

(b) The presiding member's proposed decision shall contain reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.

Authority: Section 25218(e), Public Resources Code.

Reference: Section 25522, Public Resources Code.

Section 1752. Presiding Member's proposed Decision; Contents.

~~(a) Whether and the circumstances under which the proposed facilities are in conformity with the 12-year forecast of statewide and service area electric power demands adopted pursuant to Section 25309(b) of the Public Resources Code.~~

~~(b)~~ (a) The extent to which the proposed facilities are in compliance with:

(1) Public health and safety standards, including any standards adopted by the commission;

(2) Applicable air and water quality standards; and

(3) Any other applicable local, regional, state, and federal standards, ordinances, regulations or laws.

~~(c)~~ (b) Necessary modifications, mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, and operated in order to:

(1) Protect environmental quality;

(2) Assure safe and reliable operation of the facility; and

(3) Comply with applicable standards, ordinances, regulations or laws.

~~(d)~~ (c) Unless the commission finds that such provisions would result in greater adverse effect on the environment or would be infeasible, specific provisions to meet the objectives of the California Coastal Act, as may be specified in a report submitted by the California Coastal Commission pursuant to Section 30413(d) of the Public Resources Code, or to meet the requirements of Division 19 (commencing with § 29000) of the Public Resources Code or Title 7.2 (commencing with § 66600) of the

Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code.

~~(e)~~ (d) With respect to controlling population density in areas surrounding the proposed facilities, proposed findings on each of the following:

(1) Whether existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities which will ensure the public health and safety;

(2) Whether, in the case of a nuclear generating facility, the area and population density criteria specified by the United State Nuclear Regulatory Commission for assuring public health and safety are sufficiently definitive for valid land use planning requirements; and

(3) Whether the commission should require as a condition of certification that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in areas surrounding the facilities in order to control population densities and to protect public health and safety.

~~(f)~~ (e) With respect to any facility to be located in the coastal zone or any other area with recreational, scenic, or historic value, proposed findings and conditions relating to the area that shall be acquired, established, and maintained by the applicant for public use and access; and with respect to any facility to be located along the coast or shoreline of any major body of water, proposed findings and conditions on the extent to which the proposed facility shall be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

~~(g)~~ (f) With respect to any of the following areas;

(1) State, regional, county or city parks;

(2) Wilderness, scenic, or natural reserves;

(3) Areas for wildlife protection, recreation or historic preservation;

(4) Natural preservation areas in existence as of January 7, 1975;

(5) Estuaries in an essentially natural and undeveloped state; Findings and conclusions on whether the facility will be consistent with the primary land use of the area; whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects; and whether the approval of the public agency having ownership or control of the land has been obtained.

~~(h)-(g)~~ With respect to any facility to be sited in a coastal zone location designated by the California Coastal Commission pursuant to Section 30413(b) of the Public Resources Code, or in a location designated by the Bay Conservation and Development Commission pursuant to subdivision (b) of Section 66645 of the Government Code, findings on whether the approval of the public agency having ownership or control of the land has been obtained, and findings of the California Coastal Commission or the BCDC, respectively, on each of the following:

(1) Whether the facility will be consistent with the primary land use of the area; and

(2) Whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects;

~~(i)-(h)~~ Where a nuclear powered facility is proposed, findings on;

(1) Whether and when the facility will require reprocessing of nuclear fuel rods or off-site storage of such fuel rods in order to provide continuous onsite fuel core reserve storage capacity; and

(2) Whether and when facilities with adequate capacity to reprocess nuclear fuel rods, if such reprocessing is required, and facilities with adequate capacity to store such fuel, if such storage is approved by an authorized agency of the United States, are or will be in actual operation at the time the nuclear powered facility requires such reprocessing or storage.

~~(j)-(i)~~ provisions for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

~~(k)-(j)~~ Findings on the extent to which the applicant has complied with the recommended minimum standards of efficiency for operation of the facility, approved pursuant to Section 25402(d) of the Public Resources Code.

~~(l)-(k)~~ With respect to any facility which does not comply with an applicable state, local or regional standard, ordinance or law, findings and conclusions on whether the noncompliance can be corrected or eliminated; and if such noncompliance cannot be corrected, findings on both the following:

(1) Whether the facility is required for public convenience and necessity; and

(2) Whether there are no more prudent and feasible means of achieving such public convenience and necessity.

~~(m)-(l)~~ Any other findings and conclusions relevant to the commission's decision.

Authority: Section 25218(e), Public Resources Code.

Reference: Sections ~~25523, 25524, 25524.1(b), 25524.2(a)~~, and 25525-25529, Public Resources Code.

Section 1755. Final Decision.

(a) At the conclusion of the hearings under Section 1754, the commission shall adopt a final written decision in conformity with Public Resources Code Section 25523.

(b) The decision shall not certify any facility considered in the proceeding unless the commission's findings pursuant to subsections ~~(a)~~, ~~(fe)~~, ~~(gf)~~, and ~~(lk)~~ of Section 1752 are all in the affirmative.

(c) The commission shall not certify any site and related facilities for which one or more significant adverse environmental effects have been identified unless the commission makes both of the following findings:

(1) With respect to matters within the authority of the commission, that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects identified in the proceeding.

(2) With respect to matters not within the commission's authority but within the authority of another agency, that changes or alterations required to mitigate such effects have been adopted by such other agency, or can and should be adopted by such other agency.

(d) If the commission cannot make both the findings required under subsection (c), then it may not certify the project unless it specifically finds both of the following:

(1) That specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the application proceeding; and

(2) That the benefits of the project outweigh the unavoidable significant adverse environmental effects that may be caused by the construction and operation of the facility.

Authority: Sections 25218(e) and 25541.5, Public Resources Code.

Reference: Sections 21080.1, 21081, 25216.3, 25523, ~~25524~~, 25525-25527, 25529 and 25541.5, Public Resources Code; Title 14, California Code of Regulations, sections 15091 and 15093.

Section 1940. Notice of Application.

(a) Upon receipt of an application the executive director in conjunction with the public adviser shall immediately take action to cause notice of the application and its date of receipt to be published in the commission's next meeting agenda and distributed to the public at large.

(b) The executive director shall transmit copies of the application to each member and ex officio member, the commission general counsel, the public adviser, the hearing officer, the Attorney General and all other persons who have requested in writing that a copy be provided.

(c) The executive director shall also transmit copies of the application to all federal, state, regional, and local agencies which have an interest in the matter and shall request that these agencies submit their written comments and recommendations on the application. Such comments shall be filed with the executive director no later than the date of the first hearing held pursuant to Section ~~1942~~1944 of these regulations.

Authority: Section 25218(e), Public Resources Code.

Reference: Section 25541, Public Resources Code.

Section 1945. Final Argument and Decision.

(a) After the hearings conducted pursuant to Section ~~1942~~1944 of these regulations, the committee shall prepare a proposed decision on the application. The proposed decision shall be distributed to the members, ex officio members, general counsel, the public adviser, the applicant, all intervenors, and any other persons designated by the presiding member.

Authority: Section 25218(e), Public Resources Code.

Reference: Section 25541, Public Resources Code.

Section 2021. Purpose of expedited proceeding; Applicability of Regulations.

(a) The purpose of a six-month application proceeding is to review and certify environmentally acceptable sites and related facilities as expeditiously as possible so as to ensure a reliable supply of electrical energy in a manner consistent with public health and safety, promotion of the general welfare, and protection of the environment. Toward that end, the commission shall give priority in review to applications that qualify for an expedited decision under this Article and demonstrate superiority with respect to environmental protection or efficiency in performance.

(b) The provisions of this Article apply to all applications filed pursuant to Public Resources Code section 25550 and 25550.5, notwithstanding any other provision to the contrary in Chapters 1, 2, and 5. This Article changes the otherwise applicable deadline for a final decision on an application for certification and adjusts other procedural deadlines as appropriate. This Article does not modify any substantive or other procedural requirements applicable to an application proceeding.

Authority: Sections 25213 and 25218(e), Public Resources Code.

Reference: Sections 25500, ~~and 25550~~, and 25550.5, Public Resources Code.